

Summary
Environmental Rules Board
Indiana Government Center South
Conference Room A
Indianapolis, Indiana
Wednesday, September 10, 2014

1. CALL TO ORDER

Chair Beverly Gard called the meeting to order at 1:30 p.m. A quorum was present.

Members present: William Etzler; Gary Powdrill; Ken Rulon; Tom Anderson; Chris Horn; Gail Boydston; Dr. Joanne Alexandrovich; Kelly Carmichael; Dr. Ted Niemiec; Mike Mettler; Pam Fisher, Cameron Clark; David Bausman; and Tom Easterly.

Present for IDEM: Bruce Palin, Assistant Commissioner, Office of Land Quality (OLQ), Nancy King, Branch Chief, Rules Development Branch (RDB) Office of Legal Counsel (OLC); Chris Pedersen, Section Chief, RDB, OLC; Lauren Aguilar, Rule Writer, RDB, OLC; Susan Bem, Rule Writer, RDB, OLC; Dan Watts, Rule Writer, RDB, OLC.

2. INTRODUCTION OF BOARD MEMBERS

Chair Gard asked the board members to introduce themselves and their affiliations.

3. APPROVAL OF MEETING SUMMARY

Chair Gard called for approval of the June 11, 2014, meeting summary. A motion was made and seconded to accept the June 11, 2014, meeting summary. The Board voted to approve the June 11, 2014, meeting summary without changes.

4. REPORTS

- Proposed PM_{2.5} Designations – IDEM Commissioner Thomas Easterly, reported that the U.S. EPA came out with proposed PM_{2.5} designations for Indiana, and they will be final at the end of 2014.
- Waters of the U.S. – Commissioner Easterly noted that the comment period closes October 20, 2014. He stated the rule more clearly defines what is regulated and what is exempt at the federal level, and the proposal should be beneficial in the long run.
- U.S. EPA Proposal on CO₂ emissions from power plants – Commissioner Easterly said IDEM is spending much time with interested people regarding how Indiana can meet the rule and what comments to file to better the process.
- IDEM Rulemaking Schedules – Ms. Chris Pedersen spoke on the rulemakings that would come before the November Environmental Rules Board (ERB) 2014 meeting.

5. RULEMAKING ACTIONS

LSA #14-188, #14-190, and #14-191, Non-Sunset Hearing 2014 Readoption under IC 13-14-9.5-1.1

Chair Gard opened the hearing for rules that do not sunset under the IC 13-14-9.5 rule expiration process. She introduced Exhibits A, B, and C, the 3 notices published in the Indiana Register, into the record of hearing.

Chair Gard said the rules that are exempt from expiration under the law and have been effective for 7 years are subject to a public notice asking for comment on any of the listed rules and a public hearing before the board.

No written comments were received. There were no commenters and no board discussion. Dr. Niemiec moved that no further action be taken and Mr. Rulon seconded. The motion passed unanimously.

LSA #12-392 Rockport Temporary Alternative Opacity Limit (TAOL)

Chair Gard opened the hearing for consideration of final adoption of new rules at 326 IAC 5, Rockport TAOL rules. She introduced Exhibit D, the preliminarily adopted rule, into the record of hearing.

Ms. Susan Bem spoke for the agency. She explained that this rulemaking is for Indiana Michigan Power Company (dba American Electric Power), a coal-fired electric generating station in Rockport, Indiana. She stated that the TAOL for Rockport is more stringent than similar TAOLs for other power plants. Mr. Powdril asked how the rule was impacted by the U.S. EPA becoming stricter on start-up/shutdown and maintenance exceedences. Ms. Bem answered that over time the U.S. EPA has been revising standards.

Commenter Ms. Jodi Perras spoke for the Sierra Club Hoosier Chapter and Beyond Coal Campaign. She said they were opposed to the proposed exemption because opacity is the main measurement for particulate matter emissions at Rockport. She said IDEM had not responded to former comments by the Sierra Club. She said there was no evaluation of current conditions of whether the plant can meet limits without exemption. Mr. Anderson asked about an alternative cleaner start-up fuel. Ms. Perras answered that it needed to be studied.

There was no further board discussion. Mr. Carmichael moved to final adopt the proposed rule and Mr. Horn seconded. By a roll call vote of 12 yes, and 2 no, the rule was final adopted.

LSA #13-272 Underground Storage Tank Delivery Prohibition

Chair Gard opened the public hearing for final adoption of amendments to 329 IAC 9-1 and 329 IAC 9-4.5, UST Delivery Prohibition. She then introduced Exhibit E, preliminarily adopted rule with IDEM's suggested changes, into the record of hearing.

Ms. Lauren Aguilar spoke for the agency. She explained the equipment maintenance requirements, registration, and also financial responsibilities. Ms. Aguilar also discussed the delivery prohibition program. She stated that these amendments would ensure IDEM complies with federal requirements and Indiana law. There were no questions and no board discussion. Mr. Tom Anderson moved to adopt IDEM's suggested changes, and Mr. Rulon seconded. By a voice vote, the motion passed unanimously. Mr. Anderson moved to final adopt the rule and Dr. Alexandrovich seconded. The board voted unanimously to final adopt the rule.

LSA #13-290 Exceptional Use Waters

Chair Gard opened the public hearing for consideration of final adoption of amendments to 327 IAC 2-1, 327 IAC 2-1.5, 327 IAC 2-6.1-5, 327 IAC 15-2-6, 327 IAC 15-13, and 327 IAC 17-2-4, Exceptional Use Waters rule. She introduced Exhibit F, preliminarily adopted rules with IDEM's suggested changes, into the record of hearing.

Ms. MaryAnn Stevens spoke for the agency. She explained the purposes of this rulemaking. This law will apply language to comply with Public Law 78-2009, corrects the list of limited use waters at 327 IAC 2-1.5-19 (a), and removes Outstanding State Resource Water (OSRW) from the list of designated uses in 327 IAC 2-1-3 and 327 IAC 2-1.5-5. Additionally, IDEM amended the definition of "endangered or threatened species" at 327 IAC 2-1-9 to reference that the definition in the anti-degradation rule at 327 IAC 2-1.3 is different.

There was no board discussion. Mr. Powdrill moved to adopt IDEM's suggested changes and Mr. Carmichael seconded. With a voice vote, the Board adopted IDEM's suggested changes. Mr. Carmichael moved to final adopt the rule as amended, and Mr. Rulon seconded. The board voted unanimously to final adopt the rule.

LSA #12-636 Stage II Vapor Recovery Systems

Chair Gard opened the public hearing for consideration of preliminary adoption of amendments to 326 IAC 2-11-2, 326 IAC 8-4-1, and 326 IAC 8-4-6, Stage II Vapor Recovery Systems. She then introduced Exhibit G, draft rules, into the record of hearing.

Ms. Chris Pedersen spoke for the agency. She stated that Section 182(b)(3) of the Clean Air Act requires a Stage II Vapor Recovery System be used at certain gasoline dispensing facilities in ozone nonattainment areas previously classified as serious, severe or extreme. She explained the history of the U.S. EPA standards and technology and application of these recovery systems.

Mr. Powdrill asked if the rule applied to tanker truck secondary vapor recovery, to which Ms. Pedersen replied "no", and Commissioner Easterly stated that they were covered by Stage I Vapor Recovery System.

There was no Board discussion. Mr. Horn moved to preliminarily adopt the rule and Mr. Carmichael seconded. The Board voted unanimously to adopt the draft rules.

LSA #14-19 Electronic Waste

Chair Gard opened the public hearing for consideration of preliminary adoption of new rules at 329 IAC 16, Electronic Waste. She then introduced Exhibit H, draft rules, into the record of hearing.

Mr. Dan Watts spoke for the agency. He stated that this rulemaking offers more flexibility for certain requirements to the current rule and other updates to improve the rule. Dr. Joanne Alexandrovich asked if these rule changes had any environmental impacts. Mr. Watts replied that the changes wouldn't have any impacts from current occurrences with electronic waste management in the state.

There were no commenters and no board discussion. Mr. Anderson moved to preliminarily adopt the rule and Mr. Mettler seconded. The Board voted unanimously to preliminarily adopt the rule.

LSA #13-245 Satellite Manure Storage Structures

Chair Gard opened the public hearing for consideration of preliminary adoption of new rules at 327 IAC 20, Satellite Manure Storage Structures rule. She then introduced Exhibit I, draft rules, into the record of hearing.

Ms. Lauren Aguilar spoke for the agency. She explained the Indiana statute IC 13-18-10.5 which states that after June 30, 2011, a person may not start construction of a satellite manure structure or expansion of a satellite manure storage structure that increases manure containment capacity without obtaining prior approval of the Department.

Commenter Bowden Quinn, Conservation Director of Sierra Club Hoosier Chapter, submitted comments. He said they disagreed with IDEM and said there should be stronger restrictions for satellite manure structures than a manure storage structure operating on a farm. Mr. Anderson asked him if he had examples of what other states have done, especially regarding the sinkhole question. Mr. Quinn replied "no".

Commenter Steve Peckinpugh, a resident of Henry County and member of a county confined feeding study committee, represented himself. He said the rule is too weak and financial security for damage to

neighboring wells is needed, as well as 1,000 foot setbacks from residential and public property lines, public notice and hearings for construction, and a prohibition on structures in floodplains and areas with a high seasonal water table.

Commenter Dave Menzer, representing the Downstream Project, Citizens Action Coalition Education Fund and his neighborhood association, felt the rule was inadequate in protecting drinking water supplies, especially rural wells. He also said these organizations felt that there should be good character provisions in the rule.

Chair Gard asked Commissioner Easterly if there were good character provisions in any statute that could be applied. Ms. Nancy King said the question pertains to the confined feeding operation regulations which are specific to the CFO regulations and that the SMSS statute does not contain the good character requirement. Mr. Cameron Clark asked if the statute not including good character means the agency cannot include it in the rule. Ms. King replied it is not statutorily prohibited but the statute does not give authority to IDEM. Mr. Anderson asked if it was the same with financial assurance. Ms. King said she could contact the Attorney General's Office for their opinion.

Mr. Rulon asked what the rule says about flood plains. Assistant Commissioner Bruce Palin, OLQ, answered that the rule language requires specific protections to be in place in order to construct within a 100-year flood plain, which generally requires at least 2 feet of construction above the 100-year flood plain level in order to protect the structure.

Commenter Josh Trenary, on behalf of Indiana Pork Advocacy Coalition, Indiana Soybean Alliance, Indiana Corn Growers Association, and Indiana Farm Bureau, said they recommend adoption of the rule. Farmers are in support of the rule and said it makes it harder to bring in out-of-state manure. He stated that more clarity was needed in 327 IAC 20-4-1(b)(8), the local zoning law requirement. He suggested IDEM issue approvals without zoning approval, but require that they will obtain zoning approval at a future date.

Commenter Kim Ferraro, Sierra Club and Hoosier Environmental Council (HEC), believes there is statutory discretion to add good character and financial assurance provisions to the rule. She also said structures should be prohibited in karst terrain and 100-year floodplains, and that more information should be required from users and there should be mandatory public notice and comment periods.

Commenter Charles Mitch, Bartholomew County, Sierra Club volunteer, said it was unclear why SMSS rules are weaker than under IC 13-18-10 and asked why the CFO statute isn't also guidance to the SMSS rule. He said IDEM needs to consider the fiscal impact to clean up if the state doesn't have strict enough rules.

Chair Gard asked how many SMSS lagoons exist. Mr. Palin said there are 2 facilities that IDEM is aware of that were constructed before requirements were in place. A third facility was built to hold manure from an already-existing confined feeding operation (CFO) and that it is expansion of a CFO, not a SMSS.

There was discussion on several topics including grandfathering of existing structures, authority to address serious problems with existing structures, out-of-state manure being brought into Indiana, whether structures should be allowed in a 100-year floodplain or karst terrain, the frequency of inspections, the differences between structures at a CFO and a SMSS, and setback distances. Dr. Alexandrovich made a recommendation that structures be inspected more frequently than monthly.

Mr. Bausman moved to preliminarily adopt the rule and Dr. Alexandrovich seconded. The Board voted unanimously to preliminarily adopt the rule.

6. CITIZEN PETITION DETERMINATIONS

Chair Gard opened the hearing to decide on board action of 2 citizen petitions presented to the June 11, 2014, board meeting. She stated that in accordance with IC 13-14-8-5, both proposals met the qualifications, except the board must determine whether each proposal met the “not plainly devoid of merit” standard. Ms. King was asked to define the standard, and she stated that it was the decision of the board to determine if the petition has merit, if it’s of interest to the Board, or the Board wants to hear more information from the people presenting the proposal. The first petition was a request to amend the definition of “interference”, which is at 327 IAC 5-17-11, related to a publicly-owned treatment works. There was a comprehensive board discussion, and Mr. Powdrill moved to hold a hearing on the proposal. Mr. Rulon seconded. The Board voted unanimously to hold a hearing on the petition.

The second petition was a request to adopt a rule to initiate the process for the development and implementation of a comprehensive, state-wide Climate Action Plan. After Board discussion, it was decided that the proposal was out of the scope of the board’s jurisdiction as a policy maker rather than a rule maker. There was no motion to hold a hearing on the Climate Action Plan.

7. OPEN FORUM

There were no questions for open forum.

8 ADJOURNMENT

The next meeting is tentatively scheduled for 1:30 p.m., EST on Wednesday, November 12, 2014, at the Indiana Government Center South Conference Room A. Chair Gard adjourned the meeting at 3:43 p.m.

CHAIRPERSON

The summary is derived from Rules Development Branch staff members’ notes. A typewritten transcript of the entire meeting is on file in the Office of Legal Counsel, Indiana Department of Environmental Management. To view approved summaries, you may go online to <http://www.in.gov/idem/4696.htm>.